

IN THE CIRCUIT COURT OF DAVIDSON COUNTY, TENNESSEE  
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

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STATE OF TENNESSEE,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. _____
	)	
DAVID DAIL doing business as SHADY	)	
VALLEY COUNTRY STORE,	)	
	)	
Respondent.	)	

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**ASSURANCE OF VOLUNTARY COMPLIANCE**

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The State of Tennessee, by and through Robert E. Cooper, Jr., the Attorney General and Reporter ("Attorney General"), at the request of Mary Clement, the Director of the Division of Consumer Affairs of the Department of Commerce and Insurance ("Division"), accepts this Assurance of Voluntary Compliance ("Assurance") given by David Dail doing business as Shady Valley Country Store of Shady Valley, Tennessee ("Respondent").

**WITNESSETH:**

Some of the facts and circumstances surrounding the execution of this Assurance are as follows:

A. The Division and the Attorney General conducted an investigation of a business practice of Respondent. This practice involved unreasonably raising gasoline prices in response

to Hurricane Ike. Respondent's business practice is more fully described in the Petition. As a result of the investigation, the Division and the Attorney General determined that certain acts and practices of Respondent violated the Tennessee Consumer Protection Act of 1977, TENN. CODE ANN. §§ 47-18-101, *et seq.* (the "Act").

B. Respondent neither admits nor denies any wrongdoing. Further, pursuant to TENN. CODE ANN. § 47-18-107(c), acceptance of this Assurance by Respondent shall not be considered an admission of a prior violation of the Act.

C. Therefore, pursuant to TENN. CODE ANN. § 47-18-107, Respondent desires to give this Assurance, and the Attorney General desires to accept it, in order to avoid the expense of litigation.

NOW, THEREFORE, acting pursuant to TENN. CODE ANN. § 47-18-107, Respondent gives, and the Attorney General accepts, the following assurances:

#### 1. DEFINITIONS

As used in this Assurance and accompanying Agreed Order, the following words or terms shall have the following meanings:

- 1.1 "Assurance of Voluntary Compliance" or "Assurance" shall refer to this document entitled Assurance of Voluntary Compliance in the matter of *State of Tennessee v. David Dail doing business as Shady Valley Country Store*.
- 1.2 "Consumer" means any person, a natural person, individual, governmental agency or other entities, partnership, corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity however organized.
- 1.3 "Division" or "Division of Consumer Affairs" shall refer to the Tennessee Division of Consumer Affairs of the Department of Commerce and Insurance.
- 1.4 "Respondent" shall refer to Shady Valley Country Store and/or any and all officers, owners, employees, agents, representatives and subsidiaries thereof.

- 1.5 "Petitioner," "State of Tennessee," or "Attorney General" shall refer to the Office of the Tennessee Attorney General.
- 1.6 "Tennessee Consumer Protection Act" or "Consumer Act" shall refer to the Tennessee Consumer Protection Act of 1977, as amended, and related statutes found at Tenn. Code Ann. §§ 47-18-101, *et seq.*

## **2. JURISDICTION**

2.1 Jurisdiction of this Court over the subject matter herein and over the persons of the Respondent for the purposes of entering into and enforcing this Assurance and the accompanying Agreed Order is admitted. Jurisdiction is retained by this Court for the purpose of enabling the parties to apply for such further orders and directions as may be necessary or appropriate for the construction, modification or execution of this Assurance and the accompanying Agreed Order, including enforcement of compliance therewith and assessment of penalties for violation(s) thereof. Respondent agrees to pay all court costs and reasonable attorneys' fees and any costs associated with any successful petitions to enforce any provision of this Assurance and the accompanying Agreed Order against Respondent.

## **3. VENUE**

3.1 Pursuant to TENN. CODE ANN. § 47-18-107, venue as to all matters between the parties relating hereto or arising out of this Assurance is solely in the Circuit Court of Davidson County, Tennessee.

## **4. PERMANENT INJUNCTION AND REHABILITATION**

It is hereby agreed that upon approval of this Assurance by the Court, Respondent and anyone in concert with Respondent, shall be permanently and forever enjoined, restrained and

bound from directly or indirectly engaging in the practices set forth herein and further, permanently required to directly or indirectly satisfy the affirmative requirements set forth herein:

4.1 Respondent shall not unreasonably raise prices or unreasonably restrict supplies of essential goods, commodities, or services, including, but not limited to, gasoline, diesel or ethanol, in direct response to a crime, act of terrorism, war or natural disaster, regardless of whether such crime, act of terrorism, war or natural disaster occurred in the State of Tennessee.

4.2 In the event a state of emergency is declared and is applicable to Respondent, the Respondent shall be required to maintain business records regarding fuel deliveries, fuel sales and pricing information for each retail location, including, but not limited to the following:

(A) Information regarding petroleum fuel deliveries from wholesalers, distributors or suppliers, including the date and time of each delivery; the type and grade of petroleum fuel product delivered; the cost per gallon paid to the wholesaler, distributor or supplier; the last tank inventory in gallons immediately before each delivery; and the name, address and telephone number of the wholesaler, distributor or supplier.

(B) Information regarding each retail price change for each petroleum fuel product offered for sale, including the date and time of each retail price change; the type and grade of petroleum fuel product; the retail price per gallon immediately after the price change; and the retail price per gallon immediately before the price change.

(C) The total dollars of retail sales.

(D) The total gallons of retail sales for each petroleum fuel product.

4.3 Respondent shall be prohibited from stating, implying or causing to be stated or implied that the Attorney General, the Division of Consumer Affairs, the Department of

Commerce and Insurance or any other governmental unit of the State of Tennessee approved, sanctioned or authorized any practice, act, or conduct of the Respondent.

4.4 Respondent shall be prohibited from representing or implying that any procedure or other acts or practices hereafter used or engaged in by Defendant have been approved, in whole or in part, by the State.

## **5. RESTITUTION**

5.1 The Respondent agrees to refund to any consumer who purchased gasoline for \$5.98 or more per gallon from Shady Valley Country Store, located at 110 Highway 133, Shady Valley, Tennessee 37604, 100% of the full amount of the actual gasoline sale, if the consumer presents a receipt or other evidence that the consumer purchased gasoline and paid \$5.98 or more per gallon of gasoline. In lieu of a receipt or other evidence, the consumer may present a sworn affidavit setting forth that the consumer purchased gasoline for \$5.98 or more per gallon. The Respondent shall report to the State in writing each request for a refund, with details about the Respondent's resolution of each request, within 20 days of the request, to the following address:

Deputy Attorney General  
Consumer Advocate and Protection Division  
Office of the Attorney General of Tennessee  
P.O. Box 20207  
Nashville, Tennessee 37202-0207

## **6. ATTORNEYS' FEES AND COSTS TO THE STATE**

6.1 Pursuant to Tenn. Code Ann. §§ 47-18-108(b)(3) and 47-18-108(a)(5), Respondent shall pay to the State of Tennessee the sum of Five Hundred Dollars (\$500.00) for attorneys' fees and costs of investigation, prosecution and monitoring for compliance of this matter, which may be used for consumer protection purposes or other lawful purpose at the sole discretion of the Attorney General. Said payment shall be made by providing a certified or cashiers check made

payable to the "Treasurer, State of Tennessee - Attorney General" and shall be delivered to the Attorney General on the day of execution of this Judgment. If the entire monetary amount anticipated by the State of Tennessee is not received, any monies received shall first be attributed to attorneys' fees pursuant to paragraph 6, and then to civil penalties pursuant to paragraph 7. If the State of Tennessee receives additional money beyond the amount set forth herein, it shall be used for attorneys fees set forth in this Paragraph.

#### **7. CIVIL PENALTY**

7.1 Pursuant to Tenn. Code Ann. § 47-18-108(b)(3), Respondent shall pay the sum of One Thousand Dollars (\$1,000.00) to the State of Tennessee as a civil penalty in this matter. Said payment shall be made immediately upon execution of this Judgment by providing the Attorney General with a certified check made payable to the "Treasurer, State of Tennessee - Civil Penalties".

#### **8. MONITORING AND COMPLIANCE**

8.1 Upon request, Respondent agrees to provide books, records and documents to the State at any time, and further, to informally or formally under oath, provide testimony and other information to the State relating to compliance with this Assurance. Respondent shall make any requested information available within one (1) week of the request, at the Office of the Attorney General, Consumer Advocate and Protection Division, 425 Fifth Avenue North, Nashville, Tennessee 37243, or at any other location within the State of Tennessee that is mutually agreeable in writing to Respondent and the Attorney General. This section shall in no way limit the State's right to obtain documents, information, or testimony pursuant to any federal or state law, regulation, or rule.

7.2 The State of Tennessee has the right to test shop Respondent for the purpose of confirming compliance with this Assurance and state law. The test shoppers are not required to disclose that they are representatives of the State of Tennessee when making contact with Respondent. Further, the State of Tennessee may record any or all aspects of its solicitations or visit(s) with Respondent in audio or video form without notice to Respondent.

#### **9. PRIVATE RIGHT OF ACTION**

9.1 Pursuant to TENN. CODE ANN. §§ 47-18-109 and 47-18-107(e), nothing in this Assurance shall be construed to affect any private right of action that a consumer/person may hold against Respondent.

#### **10. PENALTY FOR FAILURE TO COMPLY**

10.1 Pursuant to TENN. CODE ANN. § 47-18-107(c), Respondent understands that upon execution and filing of this Assurance, any subsequent failure to comply with the terms hereof is *prima facie* evidence of a violation of the Tennessee Consumer Protection Act.

10.2 Pursuant to TENN. CODE ANN. § 47-18-107(f), Respondent understands that any knowing violation of the terms of this Assurance shall be punishable by civil penalties of not more than One Thousand Dollars (\$1,000.00) for each violation, in addition to any other appropriate penalties and sanctions, including but not limited to contempt sanctions and the imposition of attorneys' fees and costs. Respondent agrees to pay all court costs and attorneys' fees associated with any petitions to enforce this Assurance and Order against the Respondent.

#### **11. REPRESENTATIONS AND WARRANTIES**

11.1 Respondent represents and warrants that the execution and delivery of this Assurance is its free and voluntary act, that this Assurance is the result of good faith negotiations,

and that Respondent agrees that the Assurance and terms hereof are fair and reasonable. The parties warrant that they will implement the terms of this Assurance in good faith. Further, no offer, agreements, or inducements of any nature whatsoever have been made to it by the State of Tennessee, its attorneys or any employee of the Attorney General's Office or the Division of Consumer Affairs to procure this Assurance.

11.2 Respondent represents that signatories to this Assurance have authority to act for and bind the Respondent.

11.3 Respondent David Dail doing business as Shady Valley Country Store warrants and represents that it is the proper party to this Assurance and the accompanying Agreed Order.

11.4 Respondent David Dail doing business as Shady Valley Country Store represents and warrants that it is the true legal name of the entity entering into this Assurance and the accompanying Agreed Order.

11.5 Respondent further acknowledge and understand that the State expressly relies upon all of the representations and warranties set forth herein, and that if they are false, unfair, deceptive, misleading or inaccurate, the State has the right to move to vacate or set aside this Assurance, if the State so elects.

## 12. GENERAL PROVISIONS

12.1 Respondent will not participate directly or indirectly in any activity to form a separate entity or corporation for the purpose of engaging in acts prohibited in this Assurance or for any other purpose which would otherwise circumvent any part of this Assurance or the spirit or purposes of this Assurance.

12.2 Neither Respondent nor anyone acting on their behalf shall state or imply or cause to be stated or implied that the Attorney General, the Division of Consumer Affairs, the



Department of Commerce and Insurance or any other governmental unit of the State of Tennessee approved, sanctioned, or authorized any practice, act, or conduct of the Respondent.

12.3 Acceptance of this Assurance by the State shall not be deemed approval by the State of any of Respondent's advertising or other business practices.

12.4 This Assurance and the accompanying Agreed Order may only be enforced by the parties hereto.

12.5 The titles and headers to each section of this Assurance are for convenience purposes only and are not intended by the parties to lend meaning to the actual provisions of the Assurance.

12.6 This document shall not be construed against the "drafter" because both parties participated in the drafting of this document.

12.7 This Assurance and the accompanying Agreed Order constitute the complete agreement of the parties with regard to the resolution of the matters set forth in the State's Petition. This Assurance is limited to resolving only matters set forth in the State's Petition.

12.8 Nothing in this Assurance shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State of Tennessee. In addition, this Assurance shall not bar the State or other governmental entity from enforcing laws, regulations or rules against Respondent.

12.9 This Assurance shall be binding and effective against Respondent upon Respondent's execution of the Assurance. In the event the court does not approve this Assurance, this Judgment shall be of no force and effect against the State of Tennessee or Respondent.

12.11 Nothing in this Assurance constitutes an agreement by the State of Tennessee concerning the characterization of the amounts paid hereunder for purposes of any proceeding under the Internal Revenue Code or any state tax laws.

12.11 Respondent waives and will not assert any defenses Respondent may have to any criminal prosecution or administrative action relating to the conduct described in the State's Petition, which defenses may be based, in whole or in part, on the Double Jeopardy or Excessive Fines Clauses of the Constitution or principles set forth in *Hudson v. United States*, 118 S. Ct. 488 (1997), and *Austin v. United States*, 509 U.S. 602 (1993), and agrees that the amount that Respondent has agreed to pay under the terms of this Assurance is not punitive in effect or nature for purposes of such criminal prosecution or administrative action.

12.12 No waiver, modification, or amendment of the terms of this Assurance shall be valid or binding unless made in writing, signed by the both parties, approved by this Honorable Court and then only to the extent set forth in such written waiver, modification or amendment.

12.13 Any failure by any party to this Order to insist upon the strict performance by any other party of any of the provisions of this Assurance and the accompanying Agreed Order shall not be deemed a waiver of any of the provisions of this Assurance and the accompanying Agreed Order, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Assurance and Agreed Order and the imposition of any applicable penalties, including but not limited to contempt, civil penalties and/or the payment of attorneys' fees to the State.

12.14 If any clause, provision or section of this Assurance shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Assurance and this Assurance shall be construed and

enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

12.15 Respondent waives any and all challenges in law or equity to the entry of the Assurance and Agreed Order by the courts. Further, Respondent waives any right to appeal, petition for *certiorari*, move to reargue or rehear or to otherwise be heard in connection with any judicial proceedings under this Assurance and Agreed Order.

12.16 Time shall be of the essence with respect to each provision of this Assurance that requires action to be taken by either party within a stated time period or upon a specified date.

12.17 This Assurance sets forth the entire agreement between the parties, and there are no representations, agreements, arrangements, or understandings, oral or written, between the parties relating to the subject matter of this Assurance which are not fully expressed herein or attached hereto.

12.18 Nothing in this Assurance or the accompanying Agreed Order shall be construed to waive any claims of Sovereign Immunity the State may have in any action or proceeding.

### **13. COMPLIANCE WITH ALL LAWS, REGULATIONS AND RULES**

13.1 Nothing in this Assurance and the accompanying Order shall be construed as relieving Respondent of the obligation to comply with all state and federal laws, regulations and rules.

### **14. FILING OF ASSURANCE**

14.1 Following the execution of this Assurance, the Attorney General shall file in the Circuit Court for Davidson County a Petition, Agreed Order and this Assurance for the Court's approval. Respondent hereby waives any and all rights which it may have to be heard in connection with judicial proceedings upon the Petition. Respondent agrees to pay all costs of

filing such Petition, Assurance and Agreed Order. Simultaneously with the execution of this Assurance, Respondent shall execute an Agreed Order. This Assurance is made a part of and is incorporated into the Agreed Order. The Respondent agree that it consents to the entry of this Assurance and Agreed Order without further notice.

**15. APPLICABILITY OF ASSURANCE TO RESPONDENT  
AND ITS SUCCESSORS**

15.1 Respondent agrees that the duties, responsibilities, burdens and obligations undertaken in connection with this Assurance shall apply to it, each of their officers, directors, managers, agents, assigns, representatives, employees, partners, subsidiaries, affiliates, parents, related entities, joint venturers, persons or other entities it controls, manages or operates, its successors and assigns, and to other persons or entities acting directly or indirectly on its or their behalf.

**16. NOTIFICATION TO STATE**

16.1 For five (5) years following execution of this Assurance, Respondent shall notify the Office of the Attorney General, in writing, at least thirty (30) days prior to the effective date of any proposed changes in its corporate structure, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or firm, the creation or dissolution or subsidiaries, or any other changes in Respondent's status that may affect compliance with obligations arising out of this Assurance.

16.2 Any notices required to be sent to the State or the Respondent by this Assurance shall be sent by United States mail, certified mail return receipt requested or other nationally recognized courier service that provides for tracking services and identification of the person signing for the document. The documents shall be sent to the following addresses:

For the State:

Deputy Attorney General  
Office of the Attorney General  
Consumer Advocate and Protection Division  
Post Office Box 20207  
Nashville, Tennessee 37202-0207  
Telephone: (615) 741-1671

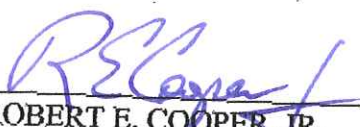
For the Respondent:

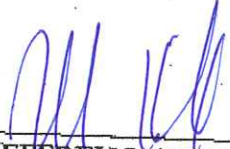
DAVID DAEL  
SHADY VALLEY Country Store  
P.O. Box 36  
SHADY VALLEY TN 37688

### 17. COURT COSTS

17.1 All costs associated with the filing and distribution of this Assurance and any other incidental costs or expenses incurred thereby shall be borne by Respondent. No costs shall be taxed against the State as provided by TENN. CODE ANN. § 47-18-116. Further, no discretionary costs shall be taxed to the State.

FOR THE STATE OF TENNESSEE:

  
ROBERT E. COOPER, JR.  
Attorney General and Reporter  
B.P.R. No. 010934

  
JEFFREY L. HILL, Senior Counsel, B.P.R. No. 16731  
BRANT HARRELL, Assistant Attorney General, B.P.R. No. 24470  
Office of the Attorney General of Tennessee  
Consumer Advocate and Protection Division  
Post Office Box 20207  
Nashville, TN 37202-0207  
Telephone: (615) 741-4657  
Facsimile: (615) 532-2910  
[jeff.hill@ag.tn.gov](mailto:jeff.hill@ag.tn.gov)  
[brant.harrell@ag.tn.gov](mailto:brant.harrell@ag.tn.gov)

Approved by:

*Mary Clement*

MARY CLEMENT, DIRECTOR

Division of Consumer Affairs

Department of Commerce and Insurance

500 James Robertson Parkway

5th Floor, Davy Crockett Tower

Nashville, TN 37243-0600

(615) 741-4737

## FOR RESPONDENT:



Name: DAVID DAIL

Title: OWNER

David Dail doing business as Shady Valley Country Store  
110 Highway 133, Shady Valley, Tennessee 37604

Phone: 423-739-2325

Facsimile: 423-739-2054

Email: DDAIL@HOTMAIL.COM